

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

DEC - 2 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Petitions for Declaratory Ruling filed by)	CC Docket No. 95-155
Beehive Telephone Co. and Database)	NSD-L-99-88
Services Management, Inc.)	NSD-L-99-87

COMMENTS

Sprint Corporation hereby respectfully submits its comments in the above-captioned proceedings in response to the Public Notice released November 2, 1999 (DA 99-2400). Sprint addresses briefly below several of the issues relating to administration of the SMS/800 system listed in the public notice.

Whether DSMI is an impartial administrator of the SMS system, under section 251(e).

Sprint believes that DSMI's performance as an impartial administrator of the SMS/800 database has been satisfactory to date, and does not object to having DSMI continue to serve in this capacity. However, it must be emphasized that DSMI's role here is essentially ministerial; it simply implements decisions made by the SMS Management Team (SMT), an entity comprised entirely of RBOC representatives. It is the SMT which determines policy, makes investment decisions, chooses hardware and software vendors, prioritizes and implements system enhancements, and sets the rates assessed on both SMS/800 users (primarily IXC's) and SCP owner-operators. Therefore, the Commission must find that management of the SMS/800 is under the control of the SMT, and that the SMT is *not* a neutral entity, in clear violation of section 251(e). In considering the neutral management of the SMS/800, and any appropriate

No. of Copies rec'd 076
List ABCDE

remedies to implement the dictates of section 251(e), the Commission's focus must be on the SMT, not DSMI.

Whether DSMI may legally discontinue providing SMS/800 service.

As administrator of the SMS/800 database, DSMI should be allowed to discontinue providing SMS/800 service to entities which violate the terms and conditions of the SMS/800 tariff in effect. The Commission has previously decided that access to the SMS/800 database by responsible organizations (resp orgs) was to be provided pursuant to tariff.¹ A customer taking service pursuant to tariff has the right to file a complaint alleging that the tariffed rates are unjust and unreasonable (and to obtain refunds, where warranted, as a result of its complaint). However, a customer which refuses to pay the effective tariffed rates also runs the risk of having its service discontinued, as that customer cannot reasonably expect to continue to receive services for which it refuses to pay. In fact, because a service provider will invariably seek to recover bad debt and uncollectible revenues from other customers who do pay their bills in the form of higher rates, the service provider cannot and should not extend service to non-paying customers indefinitely.

Whether DSMI may administer the SMS/800 system under tariff even though it is not a common carrier.

Sprint is unaware of any requirement that the agent which administers a federal tariff must be a common carrier.² To the contrary, it is quite common for the common carrier that issues a tariff to select an agent to perform certain of the functions associated with provision of the tariffed service. NECA, for example, which is not a common carrier, not only files but also bills and collects charges contained in interstate access tariffs on behalf of the issuing common

¹ *Provision of Access for 800 Service*, 8 FCC Rcd 1423 (1993).

² The SMS/800 tariff is issued jointly by the Bell Operating Companies, which are common carriers.

carriers, with the Commission's explicit authorization.³ "There is nothing in section 203 which colorably suggests that Congress intended to prohibit carriers from using agents to enforce provisions of their tariffs" (*id.*, para. 24).

Whether Beehive held a constitutionally protected property interest in toll free numbers that DSMI violated by discontinuing service to Beehive.

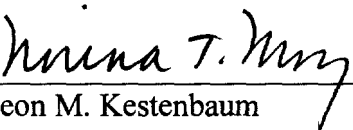
The Commission has consistently found that toll free numbers, like numbering resources generally, are a public resource, and that carriers "do not 'own' toll free codes or numbers, but rather administer their distribution for the efficient operation of the public switched telephone network."⁴ That toll free numbers are a public resource has also been recognized by the industry generally, as reflected in the toll free Industry Guidelines. There is no basis for reversing the Commission's prior findings or the generally accepted industry standards as regards "ownership" of toll free numbers. Indeed, a finding by the Commission that Beehive "owns" toll free codes or numbers would eviscerate its policy of toll free number portability, since Beehive could conceivably argue that any numbers under its control should remain under its control, even if its end user subscribers wished to port their numbers to another service provider.

³ *In the Matter of Communique Telecommunications, Inc. d/b/a Logically Application for Review of the Declaratory Ruling and Order Issued by the Common Carrier Bureau, Memorandum Opinion and Order* released August 9, 1999 (FCC 99-80), para. 19 (citing the 1983 *Access Charge Order*) and para. 24.

⁴ *See, e.g., Toll Free Service Access Codes*, 12 FCC Rcd 11162, 11185 (para. 30) (1997), citing *NANP Order*, 11 FCC Rcd 2588 (1995).

Respectfully submitted,

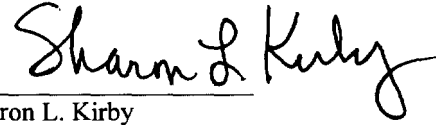
SPRINT CORPORATION.


Leon M. Kestenbaum
Norina T. Moy
1850 M St., N.W., Suite 1110
Washington, D.C. 20036
(202) 857-1030

December 2, 1999

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document of Sprint Corporation was hand delivered or sent by United States First-Class mail, postage prepaid, on this the 2nd day of December, 1999 to the following parties:



Sharon L. Kirby

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Network Services Division (2 copies)
445 12th Street, Room 6-A207
Washington, DC 20554

ITS
445 12th Street, SW, CY-B400
Washington, DC 20554

Russell Lukas
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, NW
12th Floor
Washington, DC 20036

Louise Tucker
DSMI
2101 L Street, NW
Washington, DC 20037